

MASS. J9.2:J97/2

JURY SERVICE

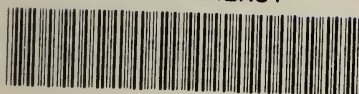
IN THE

Commonwealth of

Massachusetts

UMASS/AMHERST

GOVERNMENT DOCUMENTS
COLLECTION



NOV 27 1998

312066016529204

of Massachusetts
Library Co.

**HOW THE
ONE DAY/
ONE TRIAL
JURY
SYSTEM
AFFECTS
EMPLOYERS
&
EMPLOYEES**

[RE: MASS. GENERAL LAW CHAPTER 234A]

INTRODUCTION:

The **One Day/One Trial Jury System** was first implemented in Middlesex County in 1979 and since then has been expanded to all the counties of the Commonwealth as of 1 January, 1988. A person summonsed under this system serves either one day or for the length of one trial, unless otherwise ordered by the court. Approximately 80% serve one day and 95% serve one to three days.

The sections of M.G.L. Chapter 234A pertaining to an **employer's responsibilities** apply to all companies that do business in the Commonwealth.

Below you will find those sections of the law that apply to employers. Also included is Regulation 4 of the Office of Jury Commissioner which is concerned with night-shift workers. Further, there is an excerpt of a pertinent statement of policy and information regarding the obligations of out-of-state businesses.

RELEVANT SECTIONS OF M.G.L. CHAPTER 234A:

Compensation and Reimbursement:

Section 47. The compensation and reimbursement policy of this chapter shall be to prevent financial hardship being imposed upon any juror because of performance of juror service insofar as possible. Where financial hardship exists, the court shall attempt to place the juror into the same financial position as such juror would have been were it not for the performance of juror service. The jury commissioner may issue regulations, not inconsistent with this chapter, further defining rights and obligations of jurors and employers with respect to compensation and reimbursements to jurors during such service.

Compensation of Employed Jurors During First Three Days of Service:

Section 48. Each regularly employed trial or grand juror shall be paid regular wages by his employer for the first three days, or part thereof, of juror service. Regular employment shall include part-time, temporary, and casual employment *as long as the employment hours of a juror may be determined by a schedule or by custom and practice established during the three-month period preceding the term of service of such juror (see statement policy on the back page).* Each self-employed trial or grand juror shall compensate himself for the first three days, or part thereof, of juror service.

Employer's or Self Employed Juror's Financial Hardship:

Section 49. The court shall have the authority to excuse an employer from the duty to compensate a juror-employee or to excuse a self-employed juror from the duty to compensate himself for the first three days, or part thereof, of trial or grand juror service upon a finding that extreme financial hardship would be imposed upon the employer or self-employed juror if such duty were not removed. If an employer or self-employed juror is so excused, the court shall award reasonable compensation in lieu of wages to the juror to be paid by the commonwealth for the first three days, or part thereof, of juror service. Such award shall not exceed fifty dollars per day of trial or grand juror service. The hearing on the employer's extreme financial hardship shall occur no later than thirty days after the tender of the juror service certificate to the employer.

Compensation of Trial Jurors After First Three Days of Service:

Section 51. Each trial juror who serves more than three days shall be paid by the commonwealth for the fourth day of service and each day thereafter at the rate of fifty dollars per day of service. A trial juror receiving payment under this section shall not be entitled to additional reimbursement for travel or other out-of-pocket expenses.

Enforcement of Employer's Duty to Compensate Jurors:

Section 60. Any employer who fails to compensate a juror-employee under the applicable provisions of this chapter and who has not been excused from such duty or compensation shall be liable to the juror-employee in tort. Upon expiration of thirty days after the tender of the juror service certificate to the employer, the juror may commence a civil action in any superior or district court having jurisdiction over the parties. Extreme financial hardship on the employer shall not be a defense to this action. The court may award treble damages and reasonable attorney's fees to the juror upon a finding of wilful conduct by the employer.

Harassment by Employer; Penalties and Enforcement:

Section 61. An employer shall not deprive a juror-employee of his employment or any incidents or benefits thereof, nor shall an employer harass, threaten, or coerce an employee because the employee has received a juror summons, responds thereto, performs any obligation or election of juror service as a grand or trial juror, or exercises any right under any section of this chapter. An employer shall not impose compulsory work assignments upon any juror-employee nor shall the employer do any other

intentional act which will substantially interfere with the availability, effectiveness, attentiveness, or peace of mind of the employee during the performance of his juror service. Any employer who violates this section shall be guilty of a crime and, upon conviction may be punished by a fine of not more than five thousand dollars. Any employer who violates this section also shall be liable in tort to the juror-employee. The juror-employee may commence a civil action in the superior court for such damages and injunctive relief as may be appropriate. The court may award treble damages and reasonable attorney's fees to the juror upon a finding of willful conduct by the employer. The legal counsel for the office of jury commissioner may submit an application for the issuance of a criminal complaint in any court of competent jurisdiction against an employer who has violated this section or section sixty.

NIGHT-SHIFT EMPLOYEES:

Regulation 4 - Night Shift Work Assignments During Juror Service:

4.1 A juror's primary obligation is to perform juror service. A juror must be free from compulsory non-jury work assignments insofar as any such assignment might interfere with the juror's availability, effectiveness, or peace of mind. A juror must refrain from any activity which might interfere with his or her effectiveness as a juror. The court will take appropriate action to insure compliance with these principles.

4.2 Applying these principles to night shifts under the One Day/One Trial system, the following policies should apply:

- A juror shall not work nor shall he or she be required to work beyond midnight on the day preceding his or her first day of juror service.
- A juror selected for a trial shall not work nor shall he or she be required to work a night shift during his or her term of juror service.
- A juror may be required to work a night shift on the day on which he or she has been finally discharged from juror service provided such discharge occurs not later than 4:00 p.m.

4.3 A juror who is duly excused from working because of juror service shall not be released nor penalized by his or her employer because of performing juror service.

4.4 See John Bath & Co., Inc. vs. Commonwealth (348 Mass 78 [1964]) as authority for some of the above policies.

Statement Of Policy Of The Office Of Jury Commissioner (14 February, 1989):

...On January 26, 1989, the members of the executive staff of the Office of Jury Commissioner met to discuss, among other things, just how [M.G.L. Ch. 234A, §48] should be interpreted. It was unanimously decided that the intent of the legislature in codifying this law was that no employee be penalized in any fashion for having to perform juror service.

For the purpose of clarification, the words "as long as the employment hours of a juror may be determined by a schedule or by custom and practice established during the three-month period preceding the term of service of such juror" are to be applied only for guidance in those instances where the employee's rate of pay varies from day to day or week to week or otherwise, and said rate is difficult to fix.

[It is also noted] that a prospective [juror] employee who is aware of his or her impending obligation to perform juror service is morally and ethically bound to so inform [his or her employer].

Affects Of Massachusetts Jury Law On Out Of State Employers:

1. Mass. General laws, Ch. 234A, §48 requires employers to compensate their employees for the first three days or part thereof of jury duty.

2. Sections 60 and 61 of this same law provides for the imposition of civil and criminal sanctions as against those employers who fail to comply.

3. The *United States Constitution* mandates that each state give full faith and credit to the laws of every other state.

4. Enforcement of this statute rests upon only the slightest business connection with this Commonwealth by the employer which is not in compliance. Federal and state case law is legion on this point.

The JUROR INFORMATION LINE ☎ :

Open Monday thru Friday, 9 am to 4:30 pm.

1-800-THE-JURY (1-800-843-5879)

TTY: 1-800-328-3202

Both of these numbers are accessible from within Massachusetts only. If you are calling from outside of the Commonwealth, please call: 1-617-422-5860

PREPARED UNDER THE AUTHORITY OF & PUBLISHED BY:
THE OFFICE OF JURY COMMISSIONER
FOR THE COMMONWEALTH, ©1991, 1994





OFFICE of JURY COMMISSIONER
560 HARRISON AVENUE - SUITE 600
BOSTON MA 02118-2447